



Policy: 2303
Procedure: 2303.01
Chapter: Juvenile Rights and Hearings
Rule: Disciplinary Hearings

Effective: 06/20/05
Replaces: 2303.01
Dated: 09/30/99

Purpose:

A juvenile in the custody of the Arizona Department of Juvenile Corrections (ADJC) in a secure facility who commits a serious act of misconduct shall receive a disciplinary hearing with appropriate due process safeguards.

Rules:

1. In accordance with Title II of the Americans with Disabilities Act (ADA) of 1990, auxiliary aids for effective communication shall be provided to participants at the hearing. The juvenile's **HOUSING UNIT MANAGER** or designee shall notify the Due Process Proceedings Office of any special needs at least two business days prior to the hearing date.
2. The secure facility **SUPERINTENDENT** may refer a juvenile who commits a serious act of misconduct while in a secure facility for a disciplinary hearing.
 - a. For purposes of this procedure, a serious act of misconduct is one of the following:
 - i. Aggravated assault on staff or juvenile;
 - ii. Sexual assault;
 - iii. Sexual abuse;
 - iv. Kidnapping;
 - v. Arson;
 - vi. Escape;
 - vii. Rioting;
 - viii. Possession of a weapon or dangerous instrument;
 - ix. Possession or use of drugs or toxic vapors;
 - x. Deliberate damage to State, staff, or peer property;
 - xi. Unlawful assembly;
 - xii. Promoting secure care facility contraband. Contraband is defined in ARS §13-2501;
 - xiii. Participating in or assisting a criminal syndicate; leading or participating in a criminal street gang;
 - xiv. Tampering with or possession of a security device.
 - b. These acts of misconduct are defined by Arizona Revised Statutes except as follows:
 - i. Sexual abuse: ARS §13-1404 applies, except the act is not limited as to age and is expanded to include any juvenile who forces another to commit any act listed in ARS 13-1404;
 - ii. Arson: a juvenile commits the act of arson by knowingly and unlawfully causing any fire or explosion;
 - iii. Possession of a deadly weapon or dangerous instrument: a juvenile commits possession of a deadly weapon or dangerous instrument by knowingly manufacturing, possessing, or transferring a deadly weapon or dangerous instrument.
 - (1) A deadly weapon is defined as anything originally designed for lethal use;
 - (2) A dangerous instrument is defined as anything that, under the circumstance in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury;
 - iv. Possession or use of drugs or toxic vapors is defined by ARS Title 13, Chapter 34.
 - (1) This act of misconduct also includes possession of prescribed medication that the juvenile is not authorized to possess at the time of possession.
 - v. Tampering with or possession of a security device:
 - (1) A juvenile commits tampering with or possession of a security device by tampering with or possessing a security device including, but not limited to, locks, communication equipment, and keys;

- (2) For the purpose of this procedure, this offense is not limited by the monetary values contained in Procedure 4005.01.
3. **Scheduling The Hearing:** Within two business days the juvenile's **HOUSING UNIT MANAGER OR DESIGNEE OR THE PRINCIPAL OR DESIGNEE** shall recommend the juvenile to the Assistant Superintendent for a possible disciplinary hearing by submitting a referral packet containing a referral form (2303.01A or 4005.01A) and all supportive documentation including, but not limited to, the following:
 - a. Incident Reports;
 - b. Witness statements, if applicable;
 - c. Juvenile's Continuous Case Plan (CCP);
 - d. Previous behavior contracts or treatment plans, if applicable;
 - e. Written damage estimate, if applicable.
 4. Within two business days of the occurrence of the incident, the **ASSISTANT SUPERINTENDENT** shall forward the referral packet to the Superintendent.
 5. Within one business day of receipt of the referral packet, the **SUPERINTENDENT OR DESIGNEE** shall review the information and discuss it with the Housing Unit Manager or Principal, where applicable.
 - a. If the Superintendent approves the request for disciplinary hearing, the **SUPERINTENDENT OR DESIGNEE** shall immediately:
 - i. Notify the Housing Unit Manager or Principal, where applicable;
 - ii. Notify the Juvenile's Case Manager;
 - iii. Notify the Assistant Director of Safe Schools;

(1) If the Superintendent denies the request for disciplinary hearing, s/he shall state the reason for denial on the referral form and return the form (or a copy of the form) to the Principal, where applicable, and the Housing Unit Manager.
 6. If the incident occurred in school, the **JUVENILE'S HOUSING UNIT MANAGER WORKING IN CONJUNCTION WITH THE PRINCIPAL OR DESIGNEE** shall complete the following within one business day of the decision to hold a hearing and document each step on Form 2303.01A or Form 4005.01A:
 - a. Notify the Due Process Proceedings Office (DPPO) to obtain a control number, date, time, and location for the hearing and forward the referral packet to the Due Process Proceedings Administrator (DPPA);
 - b. Notify the juvenile's parent(s)/guardian of the hearing date, time, location, the allegations of the disciplinary referral, and the juvenile's rights;
 - c. Notify the **YOUTH RIGHTS OMBUDS ADMINISTRATOR (YROA)**, who shall appoint a Juvenile Ombuds (JO) for the juvenile;
 - d. Notify the victim(s), if any;
 - e. Orally notify the juvenile of the hearing and read the allegations and his/her rights regarding a hearing to the juvenile.
 7. The **HOUSING UNIT MANAGER** shall orally verify that the juvenile understands his/her rights and shall request the juvenile's signature on a copy of Form 2303.01A or Form 4005.01A as documentation of contact and advisement. The juvenile has the:
 - a. Right to remain silent;
 - b. Right to written and oral notification of alleged violation(s);
 - c. Right to contact parent(s)/guardian;
 - d. Right to an impartial fact-finding hearing by a Youth Hearing Officer;
 - e. Right to speak on his/her own behalf, present evidence, and present legitimate and available witnesses;
 - f. Right to question witnesses;

- g. Right to be assisted by a Juvenile Ombuds (JO); and
 - h. Right to written notification of decision on disposition.
8. The **HOUSING UNIT MANAGER** shall arrange for the appearance of the necessary witnesses and the presentation of relevant documents at the hearing. If the incident occurred in school, the **PRINCIPAL OR DESIGNEE** shall share this responsibility. The **JUVENILE OMBUDS (JO)** shall arrange for the appearance of witnesses and the presentation of relevant documents on the juvenile's behalf.
9. The **DUE PROCESS PROCEEDINGS OFFICE (DPPO)** shall complete the following:
- a. Schedule the hearing within three business days of notification by the Housing Unit Manager or designee;
 - b. Appoint a Youth Hearing Officer.
10. At least one business day prior to the hearing, the **HOUSING UNIT MANAGER AND JO** shall exchange lists of any witnesses they may call or any exhibits they may offer into evidence (Form 2303.01B). Each side shall provide copies of documents to the other or provide an opportunity to inspect exhibits, as applicable. Failure to comply may result in the exclusion of evidence, as the hearing officer deems just.
11. **Request For Continuance:** The **HOUSING UNIT MANAGER AND JO** shall make any requests for continuance of the hearing date or extensions of time for any action required in paragraphs three through six of this procedure in writing, by FAX, e-mail, or hand delivery to the DPPA or designee and a copy transmitted to the other party (JO or Housing Unit Manager), utilizing Form 2303.01.D:
- a. The **REQUESTOR** shall state the amount of time requested and the reason(s) for the request;
 - b. When a request for continuance is made, the **HOUSING UNIT MANAGER AND JO** shall respond by FAX, e-mail, or hand delivery to the DPPA or designee and to the party requesting the continuance;
 - c. The **DPPA OR DESIGNEE** shall only grant continuances upon a showing of extraordinary circumstances. The fact that the incident is under investigation by either ADJC Inspections and Investigations Division or outside law enforcement agencies shall not, alone, be grounds for a continuance;
 - d. The **DPPA OR DESIGNEE** may continue a hearing up to a maximum of three business days;
 - e. When circumstances prevent the filing of a written request for continuance in advance, the **REQUESTOR** may make a motion orally at the hearing. The **YOUTH HEARING OFFICER (YHO)** shall only consider the motion upon a showing that it could not have been made earlier.
12. **The Fact-Finding Hearing:** The **YHO** shall conduct the hearing as follows:
- a. The **JUVENILE** shall be present at the hearing unless:
 - i. The juvenile waives attendance in writing which is witnessed and signed by the juvenile's JO;
 - ii. The juvenile's disruptive behavior prevents attendance;
 - (1) **PERSONNEL** seeking to exclude a juvenile from a hearing shall present documentation detailing the juvenile's behavior and attempted intervention methods;
 - (2) The **YHO** shall make periodic attempts to return the juvenile to the hearing, so long as s/he maintains appropriate behavior;
 - iii. There is good cause to believe that the juvenile's presence during the testimony of a particular witness would endanger that witness or another person;
 - (1) **ANY EMPLOYEE** seeking to exclude a juvenile from a hearing for this reason shall make the request of the Due Process Proceedings Administrator by FAX, e-mail, or

hand delivery one business day prior to the hearing and shall copy the YROA in the same manner.

(2) The **YRO** shall have an opportunity to respond.

- b. The **YHO** may consider all evidence relevant to the allegations being heard, except as provided in rule 12c;
 - c. The **YHO** shall not admit materials completed or required to be completed in separation and statements made by the juvenile in separation as part of separation programming that are related to the allegation(s) being considered are not admissible, except at the request of the juvenile;
 - d. The **HOUSING UNIT MANAGER and JO** may call witnesses and offer documentary and physical evidence;
 - e. **WITNESSES** may testify telephonically, provided the YHO, Housing Unit Manager, or designee, JO, and parent(s)/guardian can all hear the testimony. The **YHO** may exclude a witness deemed to be irrelevant or disruptive at the hearing;
 - f. The **HOUSING UNIT MANAGER, JUVENILE OR JO, AND THE HEARING OFFICER** may examine each witness who testifies;
 - g. At the completion of the fact-finding hearing, the **YHO** may advise the juvenile of the decision or take the matter under advisement;
 - h. If the YHO has taken the matter under advisement, the **YHO** shall make the findings and telephonically communicate the results to the JO and the Housing Unit Manager or designee within two business days.
13. Upon finding a violation, the **YHO** shall set the matter for a disposition hearing within five business days. The **YHO** may proceed to disposition immediately upon agreement of the parties if the violation involves restitution only.
14. **Preparing The Disposition Recommendation:** Prior to disposition the juvenile's **TREATMENT TEAM** shall meet and develop a recommended disciplinary action plan or the **HOUSING UNIT MANAGER** shall make an assessment of the amount of restitution due:
- a. If a juvenile does not yet have a Treatment Team, a **DISCIPLINARY TREATMENT TEAM** shall consist of the following personnel and shall be convened by the juvenile's Housing Unit Manager:
 - i. The juvenile's Housing Unit Manager;
 - ii. A representative of the Behavioral Health who is assigned to the juvenile's current housing unit;
 - iii. A representative of Education;
 - b. The **DISCIPLINARY TREATMENT TEAM** may also include:
 - i. The juvenile's family;
 - ii. Any victim of the offense who wishes to be involved;
 - iii. Other staff.
 - c. To assess restitution, the **HOUSING UNIT MANAGER** shall assess and identify the property loss or damage as one of three kinds:
 - i. Time and Maintenance: Graffiti and/or other defacing of structures, furniture, equipment, and other properties which can be cleaned off, repainted or otherwise restored using only time and maintenance materials. The juvenile involved shall assist in the necessary maintenance;
 - ii. Repairable Property: Damage to structures, furniture, equipment, and other properties which require repair rather than replacement. The juvenile shall assist in the repair of the item;
 - iii. Replacement Property: The cost of structures, furniture, equipment, and other properties which have been damaged beyond repair. The juvenile involved shall assist in the (labor) replacement of the item.

15. The **TEAM** shall involve the juvenile and the JO, if appropriate, in the plan development. The **TEAM** shall explain and discuss the recommended plan with the juvenile and, when applicable, the juvenile's family. In the disposition recommendation the **TEAM** shall:
- Designate the juvenile's level placement, which may be dropped to any level lower than the juvenile's level at the time of the violation or to disciplinary status;
 - Develop a disciplinary action plan that includes the requirements and accomplishments the juvenile must meet in order to regain prior level status;
 - Designate the amount of money owing or number of work hours to be performed in order to satisfy restitution.
16. **The Disposition Hearing:**
- The YHO shall conduct the disposition hearing in an informal manner and shall proceed as follows:
 - A **REPRESENTATIVE OF THE TREATMENT TEAM/DISCIPLINARY TREATMENT TEAM** shall present the Team's recommendation, unless restitution is the only issue, at which time the **HOUSING UNIT MANAGER** shall present the restitution request;
 - The **JO** shall present the juvenile's response;
 - The **TREATMENT TEAM, DISCIPLINARY TREATMENT TEAM, OR HOUSING UNIT MANAGER REPRESENTATIVE** shall have the last opportunity to speak;
 - The **YHO** may ask questions of any person who provides information.
17. At the completion of the presentation of evidence at the disposition hearing, the **YHO** shall:
- Approve or disapprove the disposition recommendations of the Treatment Team or Housing Unit Manager which may be modified at the hearing;
 - Designate the juvenile's level. The **YHO** may order a lesser or greater level drop than the sanction recommended by the Treatment Team;
 - Set the amount of money to be transferred from the juvenile's account to the victim or assign the number of restitution work hours to be performed by the juvenile; and
 - Issue a hearing report within five business days.
18. The **YHO** shall provide copies of the hearing report to the following:
- Youth Hearing Officer;
 - Housing Unit Manager;
 - Juvenile;
 - JO;
 - Parent(s)/Guardian;
 - Referring Superintendent;
 - Assistant Director of Safe Schools;
 - Deputy Director;
 - Field File;
 - DPPO File;
 - Business Manager (Restitution orders only).
19. **Appeals:** No later than five business days from approval of the disciplinary plan, the **JUVENILE OR THE JO** may submit an appeal of the decision to the Legal Systems Assistant Director. (Form 2303.01C).
- The **JO OR OTHER EMPLOYEE** shall provide the juvenile an appeal form, upon request;
 - The **JUVENILE** must state objections to:
 - The disciplinary process;
 - The reasons for his/her disposition; or
 - The process by which the disciplinary plan or restitution order was developed.
 - The **JO OR OTHER EMPLOYEE** may assist the juvenile in the preparation of the appeal, upon request;

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- d. The **JO OR JUVENILE** shall forward the appeal to the Due Process Proceedings Office (DPPO) for processing;
 - e. The **DPPO**, after logging the appeal, shall immediately forward the appeal to the Legal Systems Assistant Director with the referral packet, the audio tape of the hearing, and any documentary or physical evidence submitted at the hearing.
20. During the appeal period, the **JUVENILE** shall abide by the disciplinary plan. However, the restitution orders are stayed until completion of the appeal process.
21. Within three business days of the filing of the appeal, the **HOUSING UNIT MANAGER** may submit a response to the appeal to the DPPO, which shall forward a copy to the Legal Systems Assistant Director.
22. Within five business days from the expiration of the response time, the **LEGAL SYSTEMS ASSISTANT DIRECTOR OR DESIGNEE** shall review the record, the appeal request, and any response and provide the juvenile with a written notice of the appeal decision (Form 2303.01G), which shall include the reason(s) for the decision. The **LEGAL SYSTEMS ASSISTANT DIRECTOR** may select any of the following options:
- a. Affirm the finding of serious rule violation(s);
 - b. Reverse the restitution order and/or the decision to place the juvenile on disciplinary status;
 - c. Order a new hearing or a new review of the restitution order by the Housing Unit Manager or of the disciplinary plan by the Multi-Disciplinary Team or Disciplinary Treatment Team within five business days;
 - d. Modify the restitution order or disposition.
23. The **LEGAL SYSTEMS ASSISTANT DIRECTOR** shall provide the decision to the DPPO. The **DPPO** shall distribute copies of the decision as specified in Rule 18 of this procedure.
24. The **DPPO** shall maintain files on all Disciplinary Hearings and submit a monthly report to the Legal Systems Assistant Director, Assistant Director-Safe Schools, Deputy Director, and Youth Rights Ombudsman Administrator regarding the juveniles reviewed, type of incidents, and consequences imposed.
25. When a juvenile has completed his or her restitution order and/or disciplinary plan, the **HOUSING UNIT MANAGER** shall send written notification (Form 2303.01F or Form 4005.01A) within two business days to:
- a. Legal Systems Assistant Director;
 - b. The Juvenile Ombuds;
 - c. The juvenile;
 - d. Parent(s)/Guardian;
 - e. Referring Superintendent;
 - f. Assistant Director-Safe Schools;
 - g. Deputy Director;
 - h. Field File;
 - i. Business Manager (restitution orders only).

Effective Date:	Approved by Process Owner:	Review Date:	Reviewed By: